

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LARRY JOSEPH THOMAS,

Plaintiff,

v.

KERN VALLEY STATE PRISON  
WARDEN, *et al.*,

Defendants.

Case No. 1:24-cv-00005-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF'S MOTION  
FOR LEAVE TO PROCEED *IN FORMA  
PAUPERIS* BE DENIED

(ECF No. 2)

**FOURTEEN (14) DAY DEADLINE**

Plaintiff Larry Joseph Thomas ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on January 2, 2024, together with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.) Plaintiff filed a certified copy of his trust account statement on January 4, 2024. (ECF No. 5.)

Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious

1 physical injury.”<sup>1</sup>

2 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy  
 3 the imminent danger exception to section 1915(g).<sup>2</sup> *Andrews v. Cervantes*, 493 F.3d 1047,  
 4 1053–55 (9th Cir. 2007). In the complaint, Plaintiff attempts to raise claims against the Warden  
 5 of Kern Valley State Prison and various judges of the Superior Court of California in Sacramento  
 6 County. (ECF No. 1.) Plaintiff argues that he was wrongly denied appointment of legal  
 7 assistance in seeking resentencing and modification of his restitution fines. Although his  
 8 handwriting is difficult to interpret, it appears Plaintiff alleges that due to the actions of these  
 9 judges in Sacramento, Plaintiff tried to commit suicide four separate times during his court  
 10 appearances. As relief, Plaintiff seeks his immediate release from custody. (*Id.*)

11 “[I]n order to qualify for the § 1915(g) imminent danger exception, a three-strikes  
 12 prisoner must allege imminent danger of serious physical injury that is both fairly traceable to  
 13 unlawful conduct alleged in his complaint and redressable by the court.” *Ray v. Lara*, 31 F.4th  
 14 692, 701 (9th Cir. 2022).

15 While Plaintiff appears to allege that he is in danger of continuing attempts to commit  
 16 suicide if he is not released from custody, this injury is not redressable by the court. Based on the  
 17 allegations on the face of the complaint, Plaintiff is challenging the validity or length of his  
 18 continued confinement. The exclusive method for asserting that challenge is by filing a petition  
 19 for a writ of *habeas corpus*, not by filing a section 1983 action. *Wilkinson v. Dotson*, 544 U.S.  
 20 74, 78 (2005). Accordingly, even assuming that Plaintiff is in imminent danger of serious  
 21 physical injury, the Court cannot grant the relief sought in this action that would alleviate such  
 22 danger. Accordingly, Plaintiff has not satisfied the exception from the three strikes bar under 28  
 23 U.S.C. § 1915(g), and Plaintiff must pay the \$405.00 filing fee if he wishes to litigate this action.

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24       <sup>1</sup> The Court takes judicial notice of the following United States District Court cases: (1) *Thomas v. Pelican*  
 25 *Bay State Prison*, Case No. 3:11-cv-04359-EMC (N.D. Cal.) (dismissed on June 18, 2012 for failure to state a claim);  
 26 (2) *Thomas v. Valencia*, Case No. 3:19-cv-00774-BAS-MSB (S.D. Cal.) (dismissed on August 13, 2019 as  
 27 frivolous); (3) *Thomas v. Richard J. Donovan*, Case No. 3:19-cv-02181-JAH-RBB (S.D. Cal.) (dismissed on August  
 28, 2020 for failure to state a claim).

27       The Court also takes judicial notice of the following United States Court of Appeals case: *Thomas v. Cal.*  
*Bd. of Parole*, Case No. 20-55260 (9th Cir.) (dismissed on November 12, 2020 as frivolous).

28       <sup>2</sup> The Court expresses no opinion on the merits of Plaintiff’s claims.

1 Alternatively, Plaintiff may file a notice of voluntary dismissal of this action.

2 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
3 District Judge to this action.

4 Further, it is HEREBY RECOMMENDED that:

- 5 1. The motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED, pursuant to 28  
6 U.S.C. § 1915(g); and  
7 2. Plaintiff be ORDERED to pay the \$405.00 initial filing fee in full to proceed with this  
8 action (or file a notice of voluntary dismissal).

9 \* \* \*

10 These Findings and Recommendations will be submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
12 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may  
13 file written objections with the court. The document should be captioned “Objections to  
14 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file  
15 objections within the specified time may result in the waiver of the “right to challenge the  
16 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)  
17 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18  
19 IT IS SO ORDERED.

20 Dated: January 8, 2024

21 /s/ *Barbara A. McAuliffe*  
22 UNITED STATES MAGISTRATE JUDGE  
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